

Message Text

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PAGE 01 STATE 178442
ORIGIN L-03

INFO OCT-01 EA-07 ISO-00 JUSE-00 PM-05 /016 R

DRAFTED BY L/EA:PMNORTON:MAD
APPROVED BY L/EA:EGVERVILLE
EA/PHL - MR. FLECK
JUSTICE - MR. HERGAN (S0BSTANCE)
NAVY/JAG - CMDR. DEBOBES
ISA - CMDR. JULIAN
DESIRED DISTRIBUTION
NAVY, JUSTICE, AIR FORCE
-----015241 300939Z /21
R 292029Z JUL 77
FM SECSTATE WASHDC
TO AMEMBASSY MANILA
INFO CINCPAC
CINCPACFLT
NAVY JAG
COMNAVBASE SUBIC
NAFLEGSVCOFF SUBIC

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E.O. 11652: N/A

TAGS: ACLM, PH

SUBJECT: NEGRITO TRIBE CASES

REF: MANILA 11467

1. DEPT CONCURS WITH EMBASSY THAT GOP WOULD UNDER THE
CIRCUMSTANCES OF THIS CASE APPEAR TO BE A, IF NOT THE,
PROPER PARTY DEFENDANT. WE AGREE THEREFORE THAT RESPONSE
ALONG THE LINES OF EMBASSY 8RAFT IN PARA 7, REFTTEL, IS
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APPROPRIATE.

2. THE SOVEREIGN IMMUNITY QUESTION IS NOT AT ALL CLEAR,
HOWEVER, AND WILL REQUIRE FURTHER CONSIDERATION IN WASH-
INGTON WHEN THE PLEADINGS AND OTHER RELEVANT INFORMATION
HAVE BEEN RECEIVED. IT WOULD APPEAR THAT THE NEGRITOS'
CAUSE OF ACTION AT LEAST IN PART RESTS ON AN ALLEGED ORAL

CONTRACT WITH THE NAVY WHICH WAS SEEMINGLY COMMERCIAL IN CHARACTER. INsofar AS THAT IS THE CASE, ASSERTION OF SOVEREIGN IMMUNITY WOULD NOT BE CONSISTENT WITH THE RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY FOLLOWED BY THE USG AND EMBODIED IN THE FOREIGN SOVEREIGN IMMUNITIES ACT (SEE SEPTTEL ON ASIAN DESIGN CASE). WE INFER THAT THIS IS WHAT SOLICITOR GENERAL MENDOZA HAD IN MIND WHEN HE STATED (PARA 6, REFTTEL) THAT WE COULD EXPECT RECIPROCAL APPLICATION OF THAT ACT.

3. IT MAY BE, HOWEVER, THAT THE NEGRITOS' CASE IN PART PERTAINS TO THE RIGHT OF THE U.S. TO USE THE LAND IN QUESTION, WHICH IS A MATTER BETWEEN THE USG AND THE GOP AND GOVERNED BY THE MBA. ASSERTION OF SOVEREIGN IMMUNITY MIGHT WELL BE APPROPRIATE WITH RESPECT TO ANY CAUSE OF ACTION OF THIS NATURE, BUT, AS NOTED ABOVE, FURTHER INFORMATION IS NECESSARY BEFORE MAKING A FINAL DETERMINATION.

4. RETENTION OF LUNA FIRM AS REQUESTED IS AUTHORIZED. JUSTICE IS COMMUNICATING DIRECTLY WITH LUNA ALONG THE ABOVE LINES.

5. DOD CONCURS. VANCE

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NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Sent Date: 29-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE178442
Document Source: CORE
Document Unique ID: 00
Drafter: PMNORTON:MAD
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770273-1305
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t1977073/aaaaacig.tel
Line Count: 83
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: cccb5b65-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 MANILA 11467
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 23-Feb-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1779350
Secure: OPEN
Status: NATIVE
Subject: NEGRITO TRIBE CASES
TAGS: ACLM, RP
To: MANILA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/cccb5b65-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009